

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

THE MUNICIPALITIES OF BAYAMÓN,  
CAGUAS, LOÍZA, LARES,  
BARRANQUITAS, COMERÍO, CAYEY,  
LAS MARÍAS, TRUJILLO ALTO, VEGA  
BAJA, AÑASCO, CIDRA, AGUADILLA,  
AIBONITO, MOROVIS, MOCA,  
BARCELONETA, CAMUY, CATAÑO, SA-  
LINAS, ADJUNTAS, ARROYO, CULEBRA,  
DORADO, GUAYNABO, HORMIGUEROS,  
JUNCOS, LAJAS, MANATÍ, NAGUABO,  
NARANJITO, UTUADO, VILLALBA,  
COAMO, OROCOVIS, VIEQUES, and  
YABUCOA on behalf of themselves and oth-  
ers similarly situated, known as the MUNICI-  
PALITIES OF PUERTO RICO,

Plaintiffs,

v.

EXXONMOBIL CORP, SHELL PLC F.K.A.  
ROYAL DUTCH SHELL PLC, CHEVRON  
CORP, BP PLC, CONOCOPHILLIPS,  
MOTIVA ENTERPRISES LLC, OCCI-  
DENTAL PETROLEUM F.K.A. ANA-  
DARKO PETROLEUM CORP, BHP, RIO  
TINTO PLC, AMERICAN PETROLEUM IN-  
STITUTE, XYZ CORPORATIONS 1-100,  
and JOHN AND JANE DOES 1-100,

Defendants.

Civil Case No. 3:22-cv-01550-SCC-HRV

Re:

Consumer Fraud; Deceptive Business Prac-  
tices; Racketeer and Corrupt Organizations  
Act, 18 U.S.C. § 1962; Sherman Act, 15  
U.S.C. § 1 et seq.; Public Nuisance; Strict  
Liability – Failure to Warn; Strict Liability –  
Design Defect; Negligent Design Defect;  
Private Nuisance; Unjust Enrichment

**ORAL ARGUMENT REQUESTED**

**DEFENDANTS' INFORMATIVE MOTION  
CONCERNING SUPPLEMENTAL AUTHORITY**

**TO THE HONORABLE COURT:**

COME NOW the undersigned Defendants, through their respective counsel, and respect-  
fully inform this Honorable Court of the *Amicus* Brief the United States recently submitted in a  
climate change case pending before the Supreme Court of Maryland. In that case, captioned *Mayor*

*and City Council of Baltimore et al. v. B.P. P.L.C. et al.*, the United States supports affirming the dismissal of state law claims for injuries allegedly caused by global climate change against many of the same Defendants here. The United States argues—like Defendants here—that the plaintiffs’ state-law claims are precluded by the structure of the United States Constitution and preempted by the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* (the “CAA”). The federal constitutional and statutory grounds that the United States urges require affirmance are squarely presented in Defendants’ Rule 12(b)(6) briefing here before the Magistrate Judge and in Defendants’ Objections to the Magistrate Judge’s Report and Recommendations to this Court. A true copy of the *Amicus* Brief is attached hereto as Exhibit A.

The action before the Maryland Supreme Court is the consolidation of three separate appeals from Maryland circuit courts dismissing climate change cases filed by the Mayor and City Council of Baltimore, the City of Annapolis, and the County of Anne Arundel (the “Maryland Plaintiffs”). The Maryland Plaintiffs asserted claims under Maryland state law for public and private nuisance, strict liability and negligent failure to warn, and trespass. *Amicus* Brief at 7. They alleged the defendants engaged in deceptive marketing, misrepresentations, and failed to warn of emission-related risks of using fossil fuel products, and were therefore responsible for an increase in the overall amount of greenhouse gas emissions in the atmosphere, which in turn exacerbated global climate change, which in turn caused harmful weather effects in Maryland. *Id.* at 7, 15. The Maryland circuit courts each dismissed those cases on the grounds that, *inter alia*, the claims are precluded by the structure of the U.S. Constitution and preempted by the CAA. *Id.* at 8. The Maryland Plaintiffs appealed those dismissals to the Maryland appellate court, after which both parties petitioned for the Maryland Supreme Court to bypass the court of appeals and hear the case directly. That petition was granted. The United States filed the *Amicus* Brief to

explain why the dismissal of the Maryland Actions should be affirmed. *Id.* at 3.

In its *Amicus* Brief, the United States explains that “[n]o one can plausibly dispute that states lack authority to decide how much greenhouse gas emissions in a neighboring state or foreign country are too much.” *Id.* at 1. “Given that Plaintiffs’ claims take aim at worldwide activities, these consolidated appeals implicate substantial federal interests.” *Id.* at 2. “Extending Maryland law to redress climate-related harms caused by activities that overwhelmingly occurred beyond state and international borders would override policy choices made by the federal government and Maryland’s sister states.” *Id.* The United States’ *Amicus* Brief demonstrates that the Constitution bars the Maryland Plaintiffs’ claims because (1) the Constitution prohibits states from regulating extraterritorial activities that occur wholly within other states and countries, and (2) the claims would conflict with the nation’s energy and foreign policies. *Id.* at 18-27. It also explains that the CAA preempts the claims because the CAA “occupies the field of interstate air pollution” and the claims conflict “with the text, structure, and objectives of the CAA’s comprehensive regulatory framework.” *Id.* at 9; *see id.* 8-17.

**Defendants here make the same arguments, showing that the Constitution’s structure precludes and preempts the application of Commonwealth law in disputes involving interstate and international emissions.** Dkt. 235 at 43-50 (Defs’ Jt. Rule 12(b)(6) Mot.); Dkt. 297 at 39-41 (Defs’ Jt. Rule 12(b)(6) Reply); Dkt. 326 at 37-38 (Defs’ Obj. to R&R); Dkt. 346 at 9-18 (Defs’ Resp. to Pls.’ Obj. to R&R); Dkt. 367 at 14-15 (Reply in Support of Obj. to R&R). The United States’ *Amicus* Brief explains that the Maryland Plaintiffs’ claims (which are similar to the Commonwealth claims here) are barred “under the principles of coequal state sovereignty and comity inherent in our Constitution’s federal structure, and the Due Process Clause and Interstate Commerce Clause in particular.” *Amicus* Brief at 22; *see id.* at 17-23. It further explains that

“even if the producers have some marginally related contacts with Maryland . . . [t]he ‘mechanism’ of Plaintiffs’ harms are not those contacts but overwhelmingly out-of-state emissions” which are beyond the scope of a state’s regulatory authority. *Id.* at 22-23.

**Like the United States, Defendants here also argue that Plaintiffs’ claims are barred because they intrude on the foreign affairs powers entrusted exclusively to the federal government.** Dkt. 235 at 48-50; Dkt. 297 at 39–41; Dkt. 326 at 38; Dkt. 346 at 17-18; Dkt. 367 at 14-15. The United States’ *Amicus* Brief demonstrates the broad and exclusive authority the federal government possesses over the Nation’s foreign affairs, *Amicus* Brief at 24-25, including its longstanding balancing of an array of policy interests relating to climate change, *id.* at 25-27. It also notes that the Maryland Plaintiffs’ claims “conflict with . . . federal policies” to bolster energy production. *Id.* at 27. Further, “even if there is no conflict, the claims would still effectively regulate wholly foreign energy activities to redress global greenhouse effects—far afield from any area of traditional state or local responsibility”—and thus would still be barred. *Id.*

**Like the United States, Defendants also argue that the Clean Air Act preempts Plaintiffs’ claims.** Dkt. 235 at 50-52; Dkt. 297 at 41–43; Dkt. 326 at 37-38; Dkt. 346 at 9-17; Dkt. 367 at 14-15. As explained in the United States’ *Amicus* Brief “[t]he CAA preempts state law claims like Plaintiffs’ claims . . . that effectively regulate out-of-state emissions because of their alleged effects on the global climate.” *Id.* at 9. This is because “[t]he CAA occupies the field of interstate air pollution, and Plaintiffs’ state tort claims conflict with the text, structure, and objectives of the CAA’s comprehensive regulatory framework.” *Id.*; *see also id.* at 8-17. Like the Plaintiffs here, the Maryland Plaintiffs’ attempt to characterize their claims “as targeting deceptive marketing” does not avoid preemption, because any finding that the marketing was tortious necessarily brings state law into conflict with the CAA. For example, the determination that the conduct created a

nuisance would require finding an ““unreasonable’ ‘interfere[nce]’ [which] would necessarily entail a judgment that the products were the source of too much out-of-state air pollution,” but the CAA vests that determination with EPA. *Id.* at 15–16. Similarly, for Plaintiffs to succeed on their failure to warn claims, this Court would need to find that Defendants’ fossil fuel products are “dangerous,” but that determination would require the Court to assess the level at which greenhouse gas emissions are “not reasonably safe”—and that “is a judgment the CAA vests with EPA and the states where the pollution originates.” *Id.* at 16. The United States also argues that the Maryland Plaintiffs’ trespass claims must fail because “permission” is a defense to trespass, and that turns on whether the products “caused more air pollution than what was permi[tted] by the CAA.” *Id.*

Accordingly, the United States’ *Amicus* Brief supports Defendants’ position that the Court should dismiss Plaintiffs’ Puerto Rico law claims because they are barred by the Constitution’s structure, the federal government’s exclusive authority over foreign affairs, and the Clean Air Act.

**WHEREFORE**, Defendants respectfully request the Honorable Court to take notice of the *Amicus* Brief submitted herewith and the position of the United States as set forth therein.

**CERTIFICATE OF SERVICE:** We hereby certify that, on this same date, the foregoing joint motion was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys and participants of record.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 29<sup>th</sup> day of July 2025.

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